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July 10, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 1, 2009

Case Number: TSO-0726

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization at this time. 1/

I. BACKGROUND

The individual is currently employed by a DOE contractor, who has requested an access authorization for him. In March 2008, the individual was arrested following a physical altercation with his wife when they both had been drinking to excess. In September 2008, the DOE conducted a Personnel Security Interview with the individual (the 2008 PSI) regarding this arrest and his misuse of alcohol. DOE Exhibit 5. In addition, the individual was evaluated in October 2008 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a Report of Psychiatric Examination (the "2008 Report") setting forth his conclusions and observations. DOE Exhibit 3.

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

In February 2009, the Personnel Security Manager of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. DOE Exhibit 1. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Section 710.8(j) and (l) of the regulations governing eligibility for access to classified material (Criteria J and L).

Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." With respect to Criterion J, Enclosure 2 states that in the opinion of the DOE-consultant Psychiatrist, in October 2008 the individual met the DSM-IV criteria for "Alcohol Abuse," without evidence of rehabilitation or reformation.

Enclosure 2 also refers to the individual's alcohol-related domestic violence incident on March 4, 2008. It states that he was arrested for choking, slapping, kicking, and raping his wife, which was witnessed by his 10 year old son, after consuming approximately 10 shots of tequila and two margaritas in approximately one and one half to two hours. 2/ It also finds that the individual acknowledged that his drinking was out of control during the March 4, 2008 incident, that he had alcoholic blackouts on March 4, 2008 and one other occasion, and that he had several previous physical altercations with his wife after consuming alcohol. It further states that the individual admitted to drinking to excess because of stresses and unhappiness in his marriage, to arguing with his sister in the summer of 2007 after consuming alcohol, and to consuming two glasses of wine when he attended a birthday party on the day before his October 2008 DOE psychiatric examination.

With respect to Criterion L, Enclosure 2 states that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy.

2/ At the hearing, the DOE counsel and the individual stipulated that although the individual was arrested for assaulting and raping his wife, there is no evidence that a rape took place, only that there was a physical altercation between the individual and his wife. The stipulation is based on the information contained in the police report of this incident [DOE Exhibit 8], and on a notarized statement from the individual's wife denying that the individual ever raped her [individual's May 7, 2009 submission]. Hearing Transcript (TR) at 9-10.

Specifically, it refers to his March 4, 2008, altercation and arrest, his admission that he was out of control with regard to his fighting during that incident, and his admission that he had several previous physical altercations with his wife after consuming alcohol. See Enclosure 2 to Notification Letter, DOE Exhibit 1.

II. *THE MAY 2009 HEARING*

At the individual's request, a hearing was convened in May 2009 to afford him an opportunity to submit information to resolve these concerns. At the hearing, testimony was received from nine persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual testified and presented the testimony of his therapist (the individual's Therapist), his Alcoholics Anonymous sponsor (the AA Sponsor), one of his ex-wives, his sister, his supervisor, a friend, and a friend/co-worker.

The hearing testimony focused on the opinions of the DOE-consultant Psychiatrist and the Therapist concerning the individual's diagnosis and his rehabilitation efforts, and on documenting the individual's alleged period of abstinence from alcohol beginning on October 26, 2008 and his recovery activities.

III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS OF TESTIMONY AND FINDINGS

A. *Diagnosis*

In his testimony at the hearing, the DOE-consultant Psychiatrist did not revise his diagnosis of Alcohol Abuse, and indicated that the testimony he heard at the hearing had given him a coherent picture of the individual's alcohol problem and the progress that he has made toward recovery. TR at 127-128. The individual's Therapist testified that the DOE-consultant Psychiatrist's evaluation was accurate, that the individual abused alcohol for a long period of time, and that his relationship with his most recent ex-wife exacerbated that abuse. TR at 14, 16. Based on this testimony, I conclude that there is no dispute among the expert witnesses that in 2008 the individual was properly diagnosed as suffering from Alcohol Abuse. In addition, I have reviewed the information in the record of this proceeding concerning the individual's history of alcohol consumption and conclude that there is ample support for this diagnosis. I therefore turn to the issue of whether the individual has demonstrated rehabilitation from this condition.

B. *The Individual's Assertions Regarding His Past Use Alcohol and Current Recovery Efforts*

The individual testified that prior to his March 2008 arrest, he and his wife were both drinking to intoxication and engaging in physical altercations. He stated that he separated from his wife after his 2008 arrest and is now divorced. TR at 118-119. The individual stated that he began his effort to achieve sobriety shortly after his March 2008 arrest when he entered family counseling and began attending AA meetings. He stated that his attendance at AA meetings gradually brought him to the realization that he has a problem with alcohol, and that he needs to maintain his sobriety to avoid future problems. TR at 104-105. He admits that he consumed alcohol on at least one occasion in the summer of

2008. He states that while he cannot remember "everything throughout last year", he is certain that he last consumed alcohol when he drank two glasses of wine at a family gathering on October 26, 2008, the day before his examination by the DOE-consultant Psychiatrist. TR at 106. He stated that he felt a sense of failure after consuming the alcohol on October 26, and renewed his commitment to sobriety after that. TR at 45-46, 101-102. He testified that since then he has done an "inventory of myself" every night and every morning, to ensure that he does not consume alcohol. TR at 106.

At the hearing, the individual submitted an AA attendance sheet. He explained that he used the sheet to document meetings that he attended in the period from March through July 2008, and then he resumed documenting meetings on the sheet in March of 2009. TR at 29, Individual's Hearing Exhibit 1. He testified that he continued to attend AA meetings regularly during the period from August 2008 through February 2009, except for a period during December 2008, when he changed his residence and was looking for a new AA meeting near his new residence. TR at 122. He stated that from August until September 2008, his AA sponsor "would drag me" to AA meetings, because he was confused about his alcoholic status and was reluctant to attend AA meetings during that period. TR at 125-126. The individual's AA sponsor, who also works with the individual, testified that during the period August through December 2008, he and the individual continued to attend some AA meetings together, and that the individual continued to give him AA writing assignments and to read the AA book with him during work breaks. The AA sponsor stated that beginning in January 2009, they no longer attended meetings together because the individual began to attend AA meetings near his new home. TR at 41-42.

The individual testified that he believes that his life is "totally better" without alcohol. He stated that he enjoys working and spending time with his son, and that he is happy to be out of a marital relationship that encouraged him to consume alcohol. TR at 108. The individual testified that he gets sobriety support from his AA sponsor, his mother, his sisters, his friend and his friend/co-worker. TR at 108. He stated that he intends to continue to work with his AA sponsor and attend AA meetings on a regular basis, and that he is committed to maintaining his sobriety for the rest of his life. TR at 138-139.

C. Corroboration for the Individual's Abstinence Since October 26, 2008

At the hearing, the individual submitted testimony and evidence to corroborate his recent sobriety. A former wife of the individual testified that she talks almost daily with the individual and sees him on at least a weekly basis to pick up their son for visits. ^{3/} She stated that as far as she is aware, the individual stopped drinking after his March 2008 arrest, and she believes that her eleven year old son would tell her if the individual was using alcohol in his home. TR at 95-96. She also is aware that the individual goes to AA meetings and has an AA sponsor. TR at 98. The individual's friend testified that he has known the individual for about ten years, but that in the last six months they have spent quite a lot of time together helping each other with home repairs. He stated that in the last nine months, he has not seen the individual consume any alcohol, and that he is aware that the individual attends AA meetings. TR at 87-88. His friend/co-worker testified that he has known the individual for three years and that they became closer friends after March 2008, when the individual separated from his wife. He stated that since March 2008, they have visited each other's homes and had barbecues together, but that he has never seen the individual consume alcohol during the entire time that he has known the individual. TR at 79-80. The individual's sister testified that she and the individual attend family gatherings together on a frequent basis, and that she has not observed the individual consume any alcohol since his March 2008 arrest. TR at 61-64. She stated that she attended a family birthday with the individual on October 26, 2008, but was not present when the individual consumed wine at that event. TR at 61-62. She stated that she believes that the individual is committed to staying sober. TR at 75. Finally, the individual's Therapist and his AA sponsor both believe that the individual has maintained sobriety since he consumed alcohol on October 26, 2008. TR at 22, 33. The individual's AA sponsor stated that the individual has worked a sincere program of recovery since March 2008, and that since October 2008, the individual has been really serious about using the tools provided by the AA program to maintain his sobriety. TR at 49.

The testimony of these witnesses indicates that since October 26, 2008, the individual has consistently practiced abstinence from alcohol in the social environments where he previously consumed

^{3/} This witness was not married to the individual at the time of his March 2008 arrest.

alcohol and in his home, where he is raising one of his children. The testimony also confirms that he has ended the marital relationship where much of his excessive drinking took place, and that he is committed to maintaining his sobriety. I find this corroborative evidence to be adequate. Accordingly, I conclude that the individual has established that he has not consumed alcohol since October 26, 2008, and that, as of the date of the hearing, he has been abstinent from alcohol for almost seven months.

D. Rehabilitation

In addition to abstaining from alcohol for almost seven months, the individual is receiving alcohol counseling from his Therapist. His Therapist testified that he has met with the individual once or twice a month since his March 2008 arrest. He stated that initially his counseling focused on marital and family issues, and that it has evolved into a therapeutic relationship that supports the individual's sobriety. He stated that he expects to continue counseling the individual until at least the first anniversary of his sobriety date in October 2009. TR at 28. His Therapist testified that he does not recall the individual's having a strong commitment to sobriety prior to his final use of alcohol on October 26, 2008, and that he may have reported some alcohol consumption during the period from late March until October 2008. TR at 52, 53-54. He stated that the individual now is committed to sobriety, and that his current risk of relapse is low. However, he testified that adequate evidence of rehabilitation and reformation for this individual involves continued counseling, participation in AA, and working with a sponsor for a full year from October 27, 2008. TR at 17-19, 57.

After hearing the evidence presented by the individual and his witnesses, the DOE-consultant Psychiatrist testified that the individual was now making a serious commitment to sobriety. He stated that when he interviewed the individual on October 27, 2008, the individual stated that he was not a "typical alcoholic", that he wants to be able to drink in moderation in the future, and that he consumed two glasses of wine the day before the interview. The DOE-consultant Psychiatrist testified that at that point, the individual "hadn't begun to reform himself and certainly hadn't been rehabilitated." TR at 127-128. He stated that following this interview, the individual made a true commitment to sobriety, and that October 27, 2008 was his true sobriety date. TR at 129. He stated that the individual now has seven months of sobriety with appropriate AA and counseling support, but that "we really need to see a year before we could say that he has been reformed." TR at

130. He added that the individual's current risk of relapse is low, and that he is confident that the individual will continue his recovery program for the full year necessary to achieve rehabilitation.

Overall, I was convinced by this expert testimony. See, e.g., *Personnel Security Hearing* (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not established). The individual's Therapist and the DOE-consultant Psychiatrist agreed that the individual's current risk of relapse is low, but that he must continue his recovery activities for a full year to achieve rehabilitation and reformation from his diagnosis of Alcohol Abuse. In this instance, the individual's candid testimony about coming to a recognition of his problem with alcohol after his October 26, 2008 relapse, as well as the evidence presented at the hearing concerning his recovery efforts, convinces me that the individual is committed to maintaining his current sobriety, that he will continue his counseling relationship and his active involvement in AA, and that he now is doing what is necessary to achieve rehabilitation from his diagnosis.

However, at the time of the hearing, the individual has maintained abstinence from alcohol for only seven months. Both the individual's Therapist and the DOE-consultant Psychiatrist believe that a full year of sobriety and recovery activities are necessary to establish rehabilitation in this case. I therefore find that the individual's current period of abstinence is not adequate to establish rehabilitation from Alcohol Abuse, and that the individual has not yet established that his long-term risk for relapsing into alcohol abuse is low. ^{4/} Accordingly, I find that the individual has not yet resolved the DOE's Criterion J concerns.

E. The DOE's Criterion L Concerns

At his 2008 PSI and at his October 2008 DOE psychiatric examination, the individual admitted that in 2007 and 2008 he had several physical altercations with his wife after consuming

^{4/} In this regard, I note that medical professionals often find that a full year of abstinence and alcohol treatment is necessary to establish rehabilitation, because a one year period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing* (Case No. TSO-0150), 29 DOE ¶ 82,800 at 85,756 (2005).

alcohol, culminating in his March 4, 2008, altercation and arrest. I agree with the DOE that these incidents and the arrest raise serious security concerns regarding his reliability associated with his pattern of excessive alcohol consumption. At the hearing, both the individual's Therapist and the DOE-consultant Psychiatrist testified that they do not believe that the individual has a problem with anger or violence that is independent from excessive alcohol consumption. TR at 23, 133. Based on my review of the entire record in this proceeding, I accept those opinions. As discussed above, the individual is committed to sobriety, is actively involved in counseling and AA activity to support that commitment, and is committed to achieving rehabilitation from his diagnosis of Alcohol Abuse on October 27, 2009. I find that when the individual achieves rehabilitation from Alcohol Abuse, he also will mitigate the DOE's Criterion L concern.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Abuse subject to Criterion J, and that his alcohol related behavior has raised a concern under Criterion L. Further, I find that this derogatory information under Criteria J and L has not yet been mitigated by sufficient evidence of rehabilitation from Alcohol Abuse. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting him an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be granted an access authorization at this time. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: July 10, 2009